

Iowa Supreme Court

Committee to Review Child Support Guidelines

Final Report May 2008

A. Introduction

The Federal Family Support Act of 1988 requires each state to maintain uniform child support guidelines and criteria, and review the guidelines and criteria at least once every four years. In Iowa, the Iowa General Assembly has entrusted the Iowa Supreme Court with this responsibility. See Iowa Code section 598.21B(1). The guidelines were last reviewed in 2004.

In March 2007, the Court established this Committee to assist with the latest scheduled review of Iowa's child support guidelines. The Court appointed the following members to the Committee:

Hon. Anuradha Vaitheswaran, Iowa Court of Appeals, Co-Chair

Steven H. Lytle, Attorney, Des Moines, Co-Chair

Hon. Thomas Bower, First Judicial District

Hon. Jeffrey Neary, Third Judicial District

Hon. Eliza Ovrom, Fifth Judicial District

Hon. Susan Christensen, Fourth Judicial District

Dr. Steven Garasky, Professor, Ames

Eric Borseth, Attorney, Altoona

Diane Dentlinger, Attorney, Des Moines

Kevin Kaufman, Attorney, Davenport

Evelyn Ocheltree, Attorney, Mason City

Dennis Ringgenberg, Attorney, Sioux City

Marlis Robberts, Attorney, Burlington

Mary Loven, Policy Supervisor, and Patricia Hemphill, Assistant Attorney General, served as staff. Dr. Jane Venohr of The Center for Policy Research, Denver, Colorado, served as technical consultant for the review. Dr. Venohr, nationally

recognized for her expertise on child support guidelines, has assisted many states, including Iowa, with guideline reviews. She was involved in Iowa's 2004 guidelines review. Once again, she served as an invaluable resource to the Committee.

The Court charged the Committee with several tasks: (1) analyze information about the number of deviations from the Iowa guidelines, (2) study current data concerning child-raising costs and other economic measures, and compare Iowa's guidelines with child-rearing measures and the guidelines of other states, (3) review and consider the findings and recommendations of the Iowa Child Support Advisory Committee, and (4) consider other information deemed necessary or useful for thorough review of the current Iowa guidelines.

The Court also charged the Committee with pursuing a recommendation of the 2004 committee to consider a pure income shares child support guideline model in lieu of the existing model. An income shares model seeks to allocate to the child the proportion of the parental income estimated to have been spent on the child when the household was intact. Although Iowa's current guidelines are considered "income shares," the format is unique. For instance, Iowa uses percentages of the non-custodial parent's net income in its schedule, while most income shares states use dollar amounts that are apportioned between the parents according to their respective incomes. Also, Iowa does not use marginal rates within income brackets, which results in "notches" in the Iowa guidelines. This produces at the edge of the income brackets the anomalous result of persons with lower incomes paying higher child support in some cases than persons having higher incomes and vice versa.

Additional deficiencies noted in the present guidelines include: (1) The Iowa guidelines have begun to vary from the underlying economic data from which the guidelines were originally developed because of the inclusion of additional income brackets, attempted smoothing to reduce the previously noted notch effects, the addition of low-income areas, and other modifications made over the years; (2) The present guideline calculation method does not permit an easy or fair method of allocating the cost of dependent health insurance regardless of which parent carries the insurance.

In connection with this final charge, the Court instructed the Committee to (a) identify the benefits and drawbacks of a pure income shares model, (b) demonstrate the support amounts that would result from application of a pure income shares model under different case scenarios and compare these results with support amounts produced by application of the guidelines of other states and with child-raising costs, (c) identify any ramifications that such a change would have with regard to modifications of existing support orders, and (d) identify measures that would be necessary to facilitate the transition from the current guidelines to a new guideline model, if adopted.

In considering these charges, the Committee studied the history of the guidelines, solicited input from the public, evaluated key facts, and, finally, reached a consensus on recommendations to be made to the court.

B. History of Iowa's Child Support Guidelines

Iowa began using child support guidelines in the early 1980s. The guidelines implicitly recognize two fundamental principles: (1) both parents have a duty to provide adequate support for their children in proportion to their respective incomes, and (2) this shared obligation should be tied to the cost of raising a child. Guided by these principles, the Iowa Supreme Court has adapted and refined the guidelines over time to address the increasingly complex economic and societal issues facing families.

In 1984, the Iowa Supreme Court, upon the recommendation of the Judicial Council, adopted guidelines for temporary support. In adopting the first guidelines the Court hoped to promote uniformity in temporary support orders, advance judicial economy, and reduce the cost of litigation. The early guidelines were simple tables that factored in both parents' net incomes and the number of minor children involved.

In 1987, the Court adopted new temporary guidelines on the advice of the Judicial Council. They were arranged in simple charts depending on the number of children involved, using the net monthly income of both parents ranging from \$0 to \$1001 in increments of \$100. The charts included a percentage that, when multiplied against the non-custodial parent's net monthly income, would determine the monthly child support obligation. These guidelines set the standard for future guidelines.

In 1988, soon after Congress passed the Federal Family Support Act, members of the Iowa General Assembly approached the Iowa Supreme Court about assuming the responsibility of promulgating permanent guidelines for Iowa. The legislators favored the Court's involvement because the process of adopting court rules is much easier and less politically charged than the process for approving administrative rules and statutes. The Court agreed to take on the duty, and the General Assembly codified the Court's new responsibility.

In 1989, the Court adopted the guidelines previously used for setting temporary support as Iowa's first permanent uniform guidelines. Since this initial action, the Court has reviewed and revised the guidelines four times -- in 1990, 1995, 2000, and 2004.

In 1990, after months of study and an opportunity for public comment, the Court approved a more complex set of permanent guidelines. The 1990 guidelines included several more items as deductions for determining net income, addressed the issue of medical support, and revised the charts to include new percentages and special instructions for cases involving parents in low income (\$500 per month and under) and high income (\$3000 per month and above) brackets.

The Court revised the guidelines again in 1995, after receiving recommendations from its advisory committee. The 1995 amendments included: extending the schedule to cover net income up to \$6,000 per month, adjusting the schedules for

persons with income under \$500 per month, adopting a fixed deduction as a multi-family adjustment (QADD), and adopting a uniform support computation form.

Major innovations to the guidelines followed the 2000 review. Based upon the recommendations of its advisory committee the Court amended the guidelines to include a credit for noncustodial parents for extraordinary amounts of visitation, allowed parties to deduct the total health insurance premium costs paid by each parent when the child is covered by the plan and a limited amount of unreimbursed medical expenses for purposes of calculating net income, and added a provision outlining the respective obligations of both parents with regard to medical expenses not covered by insurance.

The guidelines were again amended in 2004. Based on recommendations of the advisory committee, the Court added a rule to standardize the deductions for income taxes for purposes of calculating child support by specifying the tax filing status for each parent and an allocation of personal exemptions, unless the court finds actual taxes differed substantially. The Court also reduced the amount of the extraordinary visitation credit, added a rule for calculation of child support when parents exercise joint or split physical care, extended the top income brackets of the schedule to \$10,000, and removed the child-support requirement for parents whose only income was Supplemental Security Income. Finally, the Court agreed with the committee's recommendation to consider replacing Iowa's present guidelines with a pure income shares model.

C. Public Outreach

The Committee began its work by soliciting input from a variety of sources. As in the previous guideline reviews, the Committee received public comment through the Child Support Advisory Committee established pursuant to Iowa Code section 252B.18. The Child Support Advisory Committee held public hearings in Tipton, Council Bluffs, and Des Moines. A large number of written comments were also received from parents. After consideration of these comments, the Child Support Advisory Committee recommended that the Court adopt the pure income shares model of calculating child support. The Child Support Advisory Committee also recommended amending the rule on extraordinary visitation credit by repealing the credit, substituting a definition of joint physical care, and changing the method of calculating support in cases of court-ordered joint physical care. Finally, the Child Support Advisory Committee asked the court to factor in the cost of health insurance premiums pursuant to a specified formula. The Child Support Advisory Committee made no specific recommendation on two other areas of interest: imputation of income and income derived from a second job or from overtime.

The Committee also solicited input from attorney groups, including the Family Law Section of the Iowa State Bar Association and the Iowa Trial Lawyers Association. Members of these groups recommended changes to the rule on qualified additional dependent deductions and addition of a rule on sharing of children's expenses in

joint physical care situations. Attorneys familiar with the pure income shares model also commented on the advantages of that model.

The Committee additionally solicited the opinions of trial court judges. Judges provided comments on whether and when to impute income to both parents, various aspects of joint physical care arrangements, reducing uncovered medical expenses to judgment and enforcing the judgment, and raising the uncovered medical expense amount.

Finally, the Committee considered comments from members of the public that were received directly by the Judicial Branch.

D. Fact-Finding

After considering the public comments, the Committee began a fact-finding process.

First, the Committee reviewed and categorized the public comments.

Second, committee members, many of them experts in family law, identified other issues, such as a new federal law and proposed federal regulations on cash medical support, as well as a recent state law on the issue.

Third, as directed by the Court, the Committee reviewed data on deviation from the guidelines. It was reported that, in cases enforced by the Child Support Recovery Unit ("IV-D" cases) statewide, the rate of deviation from the guidelines was 1.3 percent. As this number was based only on "IV-D" cases, the general consensus was that the number might be somewhat understated. However, the rate was determined to be at the low end of the range of deviation rates reported by other states.

Fourth, with Dr. Venohr's assistance, the Committee reviewed the format of Iowa's charts. The Committee compared Iowa's charts to the charts of other states that use an income shares model. The Committee reviewed estimates of child-rearing expenses, considering several measures including the Rothbarth and Engel models. Dr. Venohr advised that Iowa's guidelines closely track the Rothbarth model.

Fifth, the Committee considered a number of other issues, including (1) how states adjust for parenting time, (2) whether income should be imputed to one or both parents and under what circumstances, (3) the qualified additional dependent deduction and Iowa's rule relative to the rules of other states, (4) whether to adjust the child support amount for child care expenses, (5) how to calculate child support for low-income obligors, (6) and whether to use gross versus net income in the schedule. Most of these topics are addressed in greater detail below. The Committee decided not to make any recommendation on child care expenses at this time, given the number of other recommended changes. Committee members agreed this may be a subject for consideration by a future committee, after parents and practitioners have had an opportunity to work with a pure income shares model, if adopted. The Committee is pleased to submit the following recommendations.

E. Recommendations

1. **Rule 9.26-Adoption of Pure Income Shares Model.** After considering input from the public and Dr. Venohr and after considering inequities in the current model, the Committee recommends the adoption of a pure income shares model. This model more clearly reflects the fundamental precept that each parent has a duty to support the child, and the level of support is a pro rata share of the parent's income. Our current charts determine the child support obligation only in terms of a percentage of the obligor's income. The pure income shares model lists the combined income of both parents and shows the child support obligation as a dollar figure to be apportioned between the parents according to their respective incomes. The fairness of this approach is readily apparent. The recommended model is simpler, as Iowa would have one chart rather than six. The recommended model more easily accommodates special factors such as the increasing cost of health insurance premiums. Many members of the public expressed concern about this factor and, specifically, the inequity of having to pay high premiums as well as child support. The 2004 committee studied this issue extensively and determined that the present deduction for health insurance premiums does not measurably reduce the obligor's child support obligation in most situations. However, that committee concluded it could make no recommendation because the inequity was likely attributable to "Iowa's variant form of the income shares model." Under the recommended model, health insurance premiums are allocated between the parents in proportion to their respective incomes regardless of which parent carries the insurance. Adoption of the pure income shares model will enable Iowa to reorient its charts to a schedule containing current economic data that can be updated periodically. This will facilitate updating of the schedule in the future. Finally, the pure income shares model will eliminate the precipitous drops in child support at certain income levels that have been referred to previously as the "notch" effect.

The Committee compared support amounts that would result from applying the new model with its proposed schedule with support amounts under Iowa's current guidelines. The Committee also considered the guidelines from surrounding states with pure income shares models. In general, the support amounts under the proposed schedule when compared to Iowa's current guidelines will result in a reduction of support obligations in the low- and high-income ranges and some increases in the middle-income ranges. (The Committee also noted that some anomalous increases may occur at the top end of the low-income ranges of the proposed new schedule when the obligee's income equals or exceeds the obligor's income. However, the Committee concluded that, in those relatively rare circumstances, the court has the option of eliminating perceived inequities by deviating from the guidelines.) The Committee recommends the proposed schedule. As noted, the proposed schedule eliminates most of the anomalies in the existing guidelines and is consistent with economic data on child-rearing costs. The

Committee believes the proposed schedule will also result in support amounts that are comparable to the support amounts in surrounding states with pure income shares models.

2. **Rules 9.4, 9.11(2)-Revision of Grounds for Rebutting Guidelines Presumption.** The present rule for variance from the guidelines requires a showing that “[a]djustments are necessary to provide for the needs of the child and to do justice between the parties, payor, or payee under the special circumstances of the case.” While this requirement can be met in the case of an upward adjustment in the child support amount, a downward adjustment would seldom be warranted in terms of providing for the needs of the children, even where compelling circumstances are presented. In order to strike a fairer balance between upward and downward deviations, the Committee recommends a one word change as follows: “Adjustments are necessary to provide for the needs of the child ~~and~~ or to do justice between the parties, payor, or payee under the special circumstances of the case.” Because Iowa’s rate of deviation from the guidelines is low, the Committee does not anticipate that this recommended change would impermissibly increase variances from the guidelines. The Committee is also recommending the relocation of a sentence addressing the child support obligations of supplemental security income recipients from the guidelines chart to Rule 9.4.
3. **Rules 9.5(11), 9.11(4)-Imputation of Income.** The Committee received many public comments on the calculation of parents’ income. The Committee agreed that there may be situations warranting imputation of income to one or both parents, but the Committee also believed this determination should not be made without an opportunity for all parties to be heard.
4. **Rule 9.5(8)-Elimination of \$25 deduction for Unreimbursed Medical Expenses.** The Committee examined the present deduction for parents’ unreimbursed medical expenses and concluded that it had no measurable effect on the child support obligation. With the recommended transition to a pure income shares model, the Committee believes that this deduction is unnecessary and is recommending that it be deleted.
5. **Rule 9.7 – Applicability of the Qualified Additional Dependent Deduction.** Rule 9.7 governs applicability of the Qualified Additional Dependent Deduction. There are two problems with the current language of the rule: 1) it is not gender neutral, and 2) its meaning is unclear.

This rule is based on Iowa Code Section 252A.3. Iowa Code Section 252A.3 states that all parents are liable for support of their minor children. Subsection (8) of Section 252A.3 states that parents of a child born out of wedlock are severally liable for the child’s support, but that the father shall not be liable for

support unless paternity has been legally established. The means of establishing paternity are listed in subsection 252A.3(8), and restated verbatim in Rule 9.7. The rule states that the party requesting the QADD must prove eligibility by one of the listed methods of establishing paternity. Therefore the rule appears to apply only to fathers of children born out of wedlock, and not to mothers or to fathers otherwise responsible for supporting other children.

This is not the intent of the rule. The rule should be gender neutral, and allow a deduction for all parents with a legal obligation to support a child under Section 252A.3 (but cannot be claimed for a child for whom there is a prior order. See Rule 9.8(2)).

- 6. Rule 9.8-Adjustment of Qualified Additional Dependent Deduction.** The Committee learned that most states do not use a flat amount for their qualified additional dependent deductions. The Committee studied this rule to determine whether the amounts of the present deduction conform with the following economic concepts: (1) the dollar amount spent on a child increases as the income of the parent increases, (2) the percentage of the parent's income spent on a child decreases as the income of the parent increases, and (3) the dollar amount spent on an additional child decreases as the number of children in a family increases. The Committee believes that shifting the deduction from a fixed dollar amount to a percentage of income underscores the concept that the dollar amount spent on a child increases as the parent's income increases. The selected percentages reflect the principle that the dollar amount spent on an additional child decreases as the number of children in a family increases. To retain the simplicity of the current rule, the Committee is recommending a schedule that varies the percentage of the deduction based on the number of children.

The Committee also is recommending one non-substantive change to Rule 9.8(2).

- 7. Rules 9.5(6), (7), (8), 9.9, 9.12, 9.14-Medical Support.** The Committee conducted an extensive study of medical support encompassing two primary issues: (1) ordering medical support for a child, and (2) the medical support order's impact on the amount of the child support obligation. The Committee recommendations would make significant adjustments to the guidelines, primarily due to changes to federal title IV, part D of the Social Security Act and proposed federal implementing regulations.

Ordering medical support -- Background. Current Iowa statute requires the court to order a parent to provide as child medical support a health benefit plan

available at reasonable cost. A health insurance plan is considered reasonable in cost if it is employment-related or other group health insurance. See Iowa Code section 598.21B(3). This state statute complies with the federal definition of reasonable cost for the provision of health insurance that was in effect as of April 2008. See 45 CFR 303.31(a)(1). Employment or group-related health insurance has been the federally mandated definition of reasonable cost since at least 1985. See 45 CFR 306.51 promulgated in *Federal Register* Volume 50, Number 200, October 16, 1985, pages 41887-41895.

The same definition applied regardless of the parent's income. However, over time, as health insurance premiums rose, consensus grew that merely because a health insurance plan was available to a parent through employment, it was not necessarily reasonable in cost for that parent. In 2000, the United States Secretaries of Health and Human Services and the Department of Labor jointly transmitted a report to Congress: *21 Million Children's Health: Our Shared Responsibility*. Among other provisions, it recommended the definition of reasonable cost be changed to no more than 5% of a parent's gross income, unless the parent had low income. See, e.g., *21 Million Children's Health: Our Shared Responsibility*, June 2000, Recommendations 9, 10 and 11.

In the Deficit Reduction Act of 2005, Congress amended Title IV-D, retaining the Secretary of Health and Human Services' authority to issue regulations defining "reasonable cost," and expanding medical support to include both health insurance and payment for medical expenses (cash medical support). See 42 USC 652(f) as amended by Public Law 109-171, section 7307. That same section of the Deficit Reduction Act reiterated an earlier Congressional mandate that a provision for child medical support be included in any order enforced by the State under Title IV-D.

Subsequent proposed federal regulations would change the definition of reasonable cost to no more than 5% of a parent's gross income, and expand the definition to apply to a health insurance premium or the amount of cash medical support. They would also adopt a hierarchy of first seeking health insurance at reasonable cost, and if such insurance is not available to either parent, then seeking an order for cash medical support. The proposed regulations, however, also allow states to adopt a reasonable alternative income-based numeric standard in lieu of the 5% amount, if that standard is placed in the state's child support guidelines. See *Federal Register* Volume 71, Number 182, September 20, 2006, pages 54965-54974.

In 2007 and 2008, the General Assembly amended the Iowa statute to conform to these federal changes, including changing the definition of

“reasonable cost.” See 2007 Iowa Acts, chapter 218, division XVIII and 2008 Iowa Acts, HF 2309, division V. In general, effective July 1, 2009, the court will order a parent to provide health insurance for a child if the premium amount for the child does not exceed 5% of that parent’s gross income. If such health insurance is not available to either parent, the court shall order cash medical support (in the amount of 5% of the parent’s income) payable to the obligee. However, the statute also authorizes the Iowa Supreme Court in its child support guidelines to adopt a standard other than the 5% standard, and if the Supreme Court does so, then that standard shall apply rather than the 5% definition. These changes repealing the current definition of reasonable cost and imposing the 5% (or alternative) standard are effective for new orders and modifications July 1, 2009. See 2008 Iowa Acts, HF 2309, sections 11, 12, 13 and 18.

Ordering medical support -- Committee rationale and recommendations.

As part of its extensive study of child support and low-income parents, the Committee also considered the impact on families of the combination of both child support and medical support obligations. As discussed elsewhere in this report, the Committee balanced multiple principles in formulating recommendations for a low-income adjustment. The Committee, therefore, was concerned that an across-the-board additional 5% medical support obligation could erode the balanced impact of the low-income adjustment to the child support amount. In addition, the Committee noted that the Legislature had already decided that if a parent’s income was low enough that the parent was ordered to pay the “minimum” child support amount under the guidelines, or the parent was in a public assistance household, then that parent could not also be ordered to pay cash medical support. Instead, that parent would be ordered to enroll the child in a health insurance policy if it became available at no cost. See 252E.1A(3)(a) as amended by 2008 Iowa Acts, HF 2309, section 12. Finally, the Committee considered phasing in graduated percentages to avoid small income changes generating large changes in obligations.

Recommendations: For the reasons stated above, the Committee recommends the Court amend rule 9.12 and exercise its authority granted by statute to adopt an alternative income-based numeric standard to define “reasonable cost” for low income parents for providing medical support as follows:

For parents whose net incomes are below the 2007 federal poverty level for one person (\$851 a month), reasonable cost means zero percent of gross

income. In other words, that parent would not be ordered to provide health insurance unless the difference in the premium between single and family coverage were zero. Further, under section 252E.1A(3)(a), that parent would not be ordered to pay a cash medical support obligation. Child support obligations for parents with net incomes below \$851 (2007 federal poverty level) would be considered “minimum” child support orders.

For parents whose net incomes are above \$850 and which coincide with the shaded or low-income adjustment cells in the basic support obligation schedule, reasonable cost would be on a graduated scale from 1 percent to 4 percent. In other words, a parent would not be ordered to provide health insurance unless the difference in the premium between single and family coverage were no more than 1 percent of gross income (or 2, 3, or 4 percent depending on net income and the number of children). Further, if such “reasonable cost” health insurance were not available, the amount of any cash medical support required by the statute in lieu of health insurance would be 1 to 4 percent, depending on the payor’s net income and the number of children.

For parents whose net incomes are higher than that reflected by the shaded areas (i.e., higher than the low income adjustment cells) of the schedule, retain the “reasonable cost” standard of 5 percent of gross income found in state statute.

Include a table of these medical support percentages with the appropriate income levels and number of children in Rule 9.12.

As with the other Committee recommendations, these proposed guidelines rules changes to Rule 9.12 should be effective the later of July 1, 2009, or six months after the Court enters an order amending the rules.

The medical support order’s impact on the amount of the child support order – Background. Currently, for purposes of calculating net monthly income to use in calculating child support, the child support guidelines allow both parents to deduct the total cost of health insurance paid by the parent if the child is covered by the plan, and actual medical support paid pursuant to court or administrative order. In addition, current Iowa law allows the court to consider the premium cost of a health insurance plan as a reason for varying from the child support guidelines (Iowa Code section 598.21B(3)). There are two issues with the current approach. First, there is a perception that the current guidelines may not provide sufficient adjustments for skyrocketing health insurance premiums. Secondly, the present method does not permit an easy or fair method of allocating the cost of dependent health insurance regardless of which parent carries the insurance. For these reasons, the Committee

closely examined health insurance costs and their impact on support. Generally, there are two ways states treat health insurance premiums in calculating child support. Iowa, as described above, now deducts the premium amount from gross income. Other states that have a “pure income shares” model and a schedule of basic support obligations may “add on” a premium amount to the basic support obligation so that the cost is more directly prorated between the parents based on their incomes. A variation of that was an option considered by the guidelines review committee in 2004. However, that committee concluded one reason they could not find a workable solution was “related to Iowa’s variant form of the income shares model.” It suggested a future review committee consider adoption of a pure income shares model to better address the issue.

According to Dr. Venohr, the basic support obligation schedule the Committee is recommending for pure income shares does not include health insurance premium costs. Therefore, an add-on for health insurance premiums is not redundant.

The medical support order’s impact on the amount of the child support order – Committee rationale and recommendations. The Committee considered this information and compared the deduction from income method with the add-on method. It concluded the add-on method generally was a more equitable way for both parents to share in the cost of insurance.

However, the Committee was also concerned that “adding on” a health insurance premium paid by a custodial parent, and proportionately sharing it via child support with a low-income noncustodial parent, could erode the balances achieved with the low-income adjustment. On the other hand, a low-income noncustodial parent paying a child’s health insurance premium could be aided by having the premium added on and shared with the custodial parent. The Committee concluded, however, that it would be a less frequent occurrence that a noncustodial parent with low income in the shaded area of the chart would have access to family coverage at a cost of 1 to 4 percent of gross income. As a general rule, it would be more consistent with the principles of the low-income adjustment not to apply the add-on if the noncustodial parent’s income were in the shaded area of the schedule. In the event a low-income noncustodial parent did agree or stipulate to paying a higher insurance premium than would be required by the medical support schedule in rule 9.12, the court could consider that premium cost as a reason to deviate from the guidelines amount. See Iowa Code section 598.21B(3).

Once the Committee decided to recommend the add-on method of sharing the premium costs, it considered the amount of the premium to be added. The Legislature, in section 252E.1A, determined that when looking at reasonable cost for ordering health insurance, the court would consider the premium difference between single and family coverage regardless of the number of individuals covered by the policy. For simplicity and ease of understanding, the Committee thought the same standard should be used in calculating the amount of child support.

Also, since the add-on method would have a more direct effect on increasing or decreasing the amount of child support, the Committee considered whether a parent should be entitled to an add-on and pro rata sharing of a premium paid by the parent even if that parent were not ordered to provide the insurance. Because of the impact on the amount of child support, and the scope of all the recommended changes, the Committee believed it would be better at this juncture to only allow the add-on if the parent were ordered to provide the insurance.

The Committee also considered the current deduction for actual medical support paid pursuant to a court or administrative order in subrule 9.5(7). One issue was circular: the change in statute effective July 1, 2009, prohibiting a cash medical support order if a parent is ordered to pay the minimum child support amount, conflicted with the need to first know whether there is a cash medical support deduction from gross income to determine the child support amount. Also, the Committee believed the 1 – 5% criteria for reasonable cost was more fairly tied to net income. However, the Committee did not believe there should be “two bites of the apple” in determining the appropriate percentage; i.e., only deduct cash medical support after calculation of preliminary net income is used to determine the cash medical support percentage (1-5%). To address all issues, the Committee believed it better to clarify the existing rule, which is now being applied to both prior orders for cash medical support, and orders for cash medical support in the pending matter.

Recommendations: *For the reasons stated above, the Committee recommends the Court amend the rules as follows:*

Regarding a health insurance premium's treatment in calculating child support:

Further amend rule 9.14 Method of computation to provide that if a parent is ordered and provides health insurance for the child, the health insurance

premium for the child be added to the basic support obligation and prorated between the parents based on their incomes.

However, there should be no premium add-on if the noncustodial parent's net income is in the low income adjustment (shaded) area of the schedule, unless the court determines a variance under rule 9.11 is warranted. If the court orders joint physical care, there should be no premium add-on if either parent's net income is in the low income adjustment (shaded) area of the schedule.

The premium add-on in joint physical care calculations should not be increased or decreased by the joint physical care multipliers described elsewhere in this report.

The premium add-on in court-ordered split/divided physical care calculations should be 50% of the premium amount to avoid doubling the effect of applying a premium add-on in both of the two calculations necessary in split/divided care cases. The low-income exception to the health insurance adjustment in paragraph 9.14(5)(c) would still apply.

Any extraordinary visitation credit under rule 9.9 not apply to a premium add-on.

Repeal subrule 9.5(6) deduction for health insurance from gross income.

Regarding a cash medical support obligation's treatment in calculating child support:

Amend subrule 9.5(7) to clarify that deduction refers to actual medical support paid pursuant to a court or administrative order in another order for other children, not the child in the pending matter.

Add subrule 9.5(8) to specify a deduction for cash medical support ordered in the pending matter, as determined by the table.

Further amend the proposed subrule 9.12(3) to specify any amount of cash medical support is determined using preliminary net income, which is gross income minus all appropriate deductions other than cash medical support in the pending matter, as determined by the new table.

Further amend proposed subrule 9.12(3) to specify the adjusted net income (preliminary net income minus the amount of cash medical support in the pending matter) is used, with the correct number of children, on the schedule of basic support obligations to calculate child support. Once the adjusted net

income has been determined, do not allow another deduction for cash medical support.

Increase the maximum amount of uncovered medical expenses from \$500 to \$800. This recommendation is a conforming change to accommodate the new recommended schedule.

8. Rules 9.3(2), 9.9, 9.12, 9.14-Low-Income Adjustment.

Policy Decisions. Child support amounts for noncustodial parents having a net monthly income of less than approximately \$1,500 require some policy decisions. Many of the State IV-D agencies' cases fall into the low-income area. One problematic statistic is that 80% of the \$100 billion in national IV-D arrears is owed by noncustodial parents with incomes of \$10,000 per year or less. There is acknowledgment for setting child support amounts that a noncustodial parent can reasonably pay without impoverishing him or herself.

Many low-income noncustodial parents do not have the ability to pay child support amounts based on estimates of child-rearing costs. In recognition of this, most states do not apply the formulae derived from child-rearing expenditures at low incomes.

Nonetheless, some in the several states using the income shares model may not be aware that their schedule incorporates a low-income adjustment because the adjustment is invisible in the schedule. The low-income adjustment is based on the concept of a self-support reserve, so that payment of the child support award should at least leave sufficient income after the payment of child support and taxes for the noncustodial parent to maintain a minimum standard of living. Typically, most states set the self-support reserve at the federal poverty guidelines for one person in the year that the state's child support guidelines were developed or last revised.

With the assistance of Dr. Jane Venohr, the Committee extensively studied various principles of low-income adjustment, as summarized in the chart below:

Principles of Low-Income Adjustment	Existing Iowa Guidelines	Typical Approaches in Other Income Shares	Implication
1. Establish guidelines amounts that low-income obligated parent can reasonably pay, i.e., the obligated parent's income after payment of the guidelines amount should be sufficient to live at least at a subsistence level. The federal poverty level for one person is considered sufficient. An exception would be where the minimum order applies	Not considered. At poverty level (\$851) assuming CP income = \$0, orders are: <ul style="list-style-type: none"> • 1 child: \$215/mo • 2 children: \$313/mo • 3 children: \$366/mo • 4 & 5 children: \$432/mo 	2007 poverty level = \$851 Most states set a minimum support amount for incomes below poverty and lower the amounts just above poverty so the obligated parent's after-child support income can afford him or her at least a sustainable income	Iowa's current orders are too high just above \$851 because payment of them leaves the obligated parent with income below the poverty level.
2. Any low-income adjustment should consider that the obligated parent is likely to be additionally ordered to provide health insurance or cash medical support. Neither shall exceed 5 percent of income.	Not addressed because medical support is new concept.	A few states have begun to incorporate	Any comparisons, after-child support incomes, etc... should recognize that an additional 5% of the obligated parent's income is assigned to medical support
3. There should be a minimum support order in the guidelines to establish a precedent that a parent is obligated to support his/her child no matter how little his/her income is.	1. 1 child- \$50/mo • 2 children - \$75/mo • 3 children- \$100/mo • 4+ children- \$125/mo	Mode is \$50, other common amounts are \$20 or 10% of income.	Given the above, minimum order amounts may be too high
4. Minimum support should be more for more children	\$25 per child more	Many state guidelines don't increase minimum support for more children. Among those that do, they typically assign 1% more of income per each additional child	Frequencies by number of children covered by order (Source: Census & data from other states): 1 child: 50-60% of orders. 2 children: 25-30% of orders; 3 children: about 10% of orders 4+ child: about 5% of orders
5. There should be a work incentive; e.g., the obligated parent keeps 50% of each additional dollar in income	Doesn't occur within existing guidelines, e.g., 1 child amts increase when CP income = \$0 <ul style="list-style-type: none"> • \$501-\$600: 14% • \$601-\$700: 19% • \$701-\$800: 21% • \$801-\$900: 25.3% • \$901-\$1,000: 25.6% • \$1,001-\$2,000: 25.8% • \$2,001-\$3,000: 24.3% 	Most state guidelines phase-out the low-income adjustment by applying 90-95% of income above poverty to child support.	
6. The low-income adjustment should be phased out gradually	There is some phase out	Most state guidelines phase-out the low-income adjustment between \$1,000 to \$2,500 per month. The phase-out occurs at higher incomes when there are more children.	The phase-out is difficult because percentage of income devoted to child-rearing expenditures decreases as income increases. At incomes of \$1,500 net, it is: 25% for 1 child 36% for 2 children 43% for 3 children 48% for 4 children 53% for 5 children

7. Adequately support the custodial-parent family	Iowa currently decreases guidelines amounts at low incomes when the custodial parent has sufficient income to support the children	Some state guidelines match the self support reserve to AFDC standard of needs or income eligibility thresholds for other public assistance programs.	Iowa income eligibility thresholds Food Stamps: 130% poverty Medicaid: 133-200% poverty SHIP: 200% poverty Child Care Assistance: 145% poverty Housing assistance: 30-80% median income
8. Encourage use of actual income rather than imputing income	Iowa CSRU's policies are considered exemplary <ul style="list-style-type: none">If parents do not complete income statement, Iowa uses information from automated sources<ul style="list-style-type: none">Iowa uses more automated sources then most states (e.g., Iowa taps into income information for pubic assistance applications whereas other states do not)Other states tend to impute at occupation min wageIowa will average quarterly wage across 3 mos, whereas other states tend to ignore quarterly wage if it less than full-time earningsIncome imputation by CSRU is infrequent. When it is imputed, it is imputed at median income for CSRU parents, which is \$1,256 among payors and \$821 among payees	Adjustment should not presume full-time minimum wage earnings	
9. Guidelines amounts should not exceed income withholding limits established by the Consumer Credit Protection Act, which range from 50-65% based on the number of dependents and whether arrearages exist.	Some five-child amounts exceed 50%	Some states cap combined support amount (cash child support, cash medical, any additional support for child care) at 45-50% of income	
10. Rely on research findings that inform the balance between setting reasonable order amounts for obligated parents and adequately supporting their children	Research findings: <ul style="list-style-type: none">A Washington State study recommends that orders should not exceed 20 percent of the nonresidential parent's gross income in IV-D cases because they found that arrears increase among nonresidential parents whose gross incomes are \$1,400 per month (and total support obligation exceed 20% of income. (Reference: Jo Peters, <i>Determining the Composition and Collectibility of Child Support Arrears, Volume 2: The Case Assessment</i>, DSHS, June 2003).<ul style="list-style-type: none">Note that \$1,400 is a gross income amount in 2001 dollars. That is equivalent to \$1,652 gross in 2007 dollars or \$1,514 after-tax income.National research finds that most (over 80 percent) of the arrears is owed by noncustodial parents who earn \$10,000 per year or less. (Reference: Federal Office of Child Support Enforcement, <i>Effects of Child Support Order Amounts on Payments by Low-Income Parents</i>, IM-07-4 (April 10, 2007). Available at the Internet at: http://www.acf.hhs.gov/programs/cse/pol/IM/2007/im-07-04.htm)		

<p>11. Minimize impact; that is, whenever the above principles do not suggest a precise amount, err on minimizing change to the guidelines amounts.</p>	
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The Committee, again with assistance from Dr. Jane Venohr, studied various methods for implementing a low-income adjustment.

The Committee recommends using a self-support reserve that is incorporated into the Schedule of Basic Support Obligations.

Several of the states that use this approach “shade” the area of the schedule where the self-support reserve applies. If the noncustodial parent’s income falls into the shaded area, it is presumed that the custodial parent’s income is \$0 to retain the adjustment. The Basic Support Obligation amount would be 100% of the schedule amount. For example, if obligor income is \$1,100, the Basic Support Obligation would be \$145 for one child.

The Committee’s recommendation follows this approach. As noted in proposed Rule 9.3(2), the basic support obligation amounts have been adjusted in the shaded area for low-income obligated parents, consistent with the policy of this state that every parent contribute to his or her children within the means available.

To include the custodial parent’s income in the calculation of such cases, or to include any adjustments like health insurance, may reduce the noncustodial parent’s net income below the self-support reserve. Accordingly, most guidelines formulae are for base support, as is our proposal. Obligations for highly variable costs such as a child’s health insurance premiums, may be added to base support. If these additional child-rearing expenses are substantial, the noncustodial parent’s share of them combined with the base support order can exceed his or her ability to pay. To address this concern, the Committee has recommended various limitations in medical support for low-income individuals. (See discussion in section 7 of this report.

A few states index the self-support reserve to the poverty level, which is updated each year. The advantage of this approach is that it is automatically updated. The disadvantage is that it requires updating the guidelines each year or sending

a memorandum about the update, which if lost or ignored, results in inconsistent self-support reserve amounts. Many states set their self-support reserve based on the federal poverty level in the year in which the guidelines were last updated (e.g., \$851 for one person in 2007), which is also the Committee's recommendation.

Low-income adjustment: Extraordinary Visitation. The Committee is also recommending a change in the extraordinary visitation rule. The Committee recommends removing the "minimum" child support amount language in Rule 9.9. Currently, Rule 9.9 states that the extraordinary visitation credit cannot reduce the child support obligation below the current minimum amount of child support (\$50 for one child, etc). The Committee's proposal is to allow the extraordinary visitation credit even at the very lowest income level.

Low-income adjustment: minimum orders currently set at \$50, \$75, etc. (located in footnote to the chart). The Committee recommends this be removed as the minimum support amount, as the proposed Schedule of Basic Support Obligations contains the basic support obligation amounts for all income levels. See the discussion below in the section entitled "Low-Income Adjustment: Medical Support" regarding the new definition of "minimum order" for purposes of medical support.

Low-income adjustment: Joint Physical Care. The Committee recommends using the parties' combined monthly income. In joint physical care situations, the parties' combined income should be used, even if one or both of the parties is low-income because they are already receiving an adjustment for joint physical care, and a further low-income adjustment is not necessary.

Low-income adjustment: Medical Support The Committee recommends other changes related to medical support. (See section 7 of this report.) The Committee also proposes that similar language be placed in the header at the top of the Schedule of Basic Support Obligations (Rule 9.26) and the Basic Method of Child Support Computation grid, lines D and E (Rule 9.14 (2)).

Rules 9.14(1), (2). The Committee is recommending the inclusion of grids that specify how to calculate adjusted net monthly income and a parent's basic child support obligation. The Committee believes that this step-by-step instruction format will allow attorneys and litigants to more easily calculate child support obligations.

9. **Rules 9.6(3), 9.6(5), 9.14(3)-Joint Physical Care.** The Iowa Code defines "joint physical care" as including both parents "maintaining homes for the child,

providing routine care for the child and under which neither parent has physical care rights superior to those of the other parent.” Iowa Code section 598.1(4).

The joint physical care calculation reflects the presumption that while exercising parenting time, a parent is responsible for and incurs the costs of caring for the child, including but not limited to, food, clothing, transportation, recreation and household expenses.

(a) Joint physical care: Calculating the Support Amount. The Child Support Advisory Committee recommended that the Guidelines Committee consider a new formula for determining the amount of child support in joint physical care cases. The Committee focused on two potential “multipliers” and adding a provision for payment of other expenses that do not constitute child support in joint physical care arrangements.

(b) Joint physical care: 1.5 multiplier to basic child-rearing costs. Dr. Venohr provided examples of language from other states’ guidelines, which explained how those states calculated child support in joint physical care cases. She also mentioned that, of the approximately 21 states that use a cross credit formula in pure income shares, only one state does not use the 1.5 multiplier.

She especially recommended that Iowa use the 1.5 multiplier because the pure income shares schedule reflects how much it costs to raise a child in an intact family; that is, one household. It costs more to raise a child in two households than one. The schedule amount multiplied by 1.5 accounts for raising the child in two households.

(c) Joint physical care: .5 multiplier to account for equal time sharing. It is anticipated that, when joint physical care is ordered, the children will ordinarily spend roughly equal time in each parent’s household. The .5 multiplier weighs each parent’s share of the support by his or her percent of time with the child (or 50%) and this reflects the amount to be retained by the parent for the time when the child is in that particular parent’s care. The .5 multiplier can be applied on top of the 1.5 multiplier because the former multiplier is an adjustment for each parent’s share of time with the child and the latter is an increase to basic child-rearing expenditures to account for more being spent on child rearing when the child is raised in two households rather than one household because some child-rearing expenses will be duplicated between the two households.

The Committee considered allowing a multiplier other than the .5 multiplier in situations of less than equally shared care, but decided against it to avoid additional complications in the transition to a pure income shares model. The recommended changes are based on the assumption of only using the .5 multiplier. A detailed review of all proposed changes would be required if a multiplier other than .5 is used.

(d) Joint physical care: taxes. The recommendation to change to a pure income shares method of calculation also necessitated a review of the current rule 9.14 on calculating child support when the court awards joint physical care. The current rule requires two calculations, the first calculation treating one parent as the custodial parent and the other parent as the noncustodial parent, and a second calculation reversing the roles. Then the results of the calculations of both parents' child support obligations are offset against each other as a method of both parents meeting their obligations.

However, if the Court adopts pure income shares using combined incomes and the schedule of basic support obligations, only one calculation is necessary before the final offsetting step. In that one calculation, though, it would no longer be appropriate to refer to one parent as "custodial" and the other as "noncustodial" if the court has ordered joint physical care. Therefore, the Committee recommends a repeal of the current rule 9.14, adoption of a new grid specifying the method of calculation in joint physical care cases, and amendments to rule 9.6 for standardizing deductions for taxes for purposes of calculating support in joint physical care cases (which no longer refer to custodial or noncustodial status in joint physical care cases).

(e) Joint physical care: Allocation of Expenses under § 598.41(5)(a). For joint physical care orders, the Committee is recommending a sentence at the end of the joint physical care subrule (9.14(3)) clarifying that a court-ordered allocation of expenses between the parties under § 598.41(5)(a) is an obligation in addition to the child support and is not child support.

11. Effective Date: As noted earlier, new state legislation on medical support has an implementation date of no sooner than July 1, 2009. If these recommendations are adopted, the Committee urges the Iowa Supreme Court to make the new rules effective no sooner than July 1, 2009. The Committee has received input from the Department of Human Services Child Support Recovery Unit and private software providers. They request at least six months to program and test the recommended changes, if adopted.

The Committee recommends that the revised guidelines, if adopted, shall apply to all cases pending on the effective date of the amendments. This is the approach successfully used for implementation of previous guideline revisions. See Rule 9.1.

- 12. Child Support Guidelines Worksheets.** The Committee recommends the continued use of the “Form 1” Guidelines Worksheet and the “Form 2” Guidelines Worksheet as set forth in Rule 9.27. The “Form 1” and “Form 2” Guidelines Worksheets have been re-drafted to include the pure income shares method of calculation, but have maintained the content and style of the previous worksheets. The “Form 2” Worksheet contains a subsection which describes the support obligation as the number of children entitled to support decreases. The Committee recommends that the “Form 1” Worksheet also include the subsection which describes the child support obligation based upon the number of children entitled to support.

The Committee recommends that the 2012 review committee further review and analyze the worksheets with the goal of simplifying the worksheets and consolidating the “Form 1” Worksheet and the “Form 2” Worksheet into one worksheet which could be used in the calculation of all child support obligations. The worksheet could be reduced in size, and the same worksheet would be used in all proceedings to establish a child support obligation. The recommended future consolidation of the worksheets should be done with input from the Bar Association and the Child Support Recovery Unit.

- 13. Combined Income Above the Schedule.** The Committee is also recommending that for combined incomes above \$20,000, the support obligation shall rest in the discretion of the court or the agency fixing support by administrative order, but should not be less than the basic support obligation for combined net monthly incomes of \$20,000.